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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

* The present report was submitted after the deadline so as to reflect the most updated information.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Summary

The mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea was established by Commission on Human Rights resolution 2004/13. It was extended in 2006 by Human Rights Council decision 1/102 for one year. Since the inception of the mandate, Professor Vitit Muntarbhorn has been the Special Rapporteur, and this report covers the situation of human rights in the country in 2005-2006, particularly until August 2006.

While welcoming the fact that the Democratic People's Republic of Korea is a party to various human rights treaties and that it has engaged with the monitoring bodies under those treaties, as well as adopting some key reforms of its domestic law such as its criminal law, there is still a huge gap between formal recognition of human rights and substantive implementation of human rights in the country. The situation in the country provides continuing cause for concern — there are still many transgressions and discrepancies of an egregious nature which require effective redress.

There are major challenges in regard to the rights to food and to life, the rights to security of the person and humane treatment, the rights to freedom of movement, asylum and refugee protection, and various political and other rights such as those to self-determination, freedom of expression, association and religion. Specific concerns raised in this report include women's rights, particularly violence against women, child rights, particularly child protection and participation, the rights of older persons/the elderly, the rights of those with disabilities and the ethnic issue.

In the middle of 2006, the situation became more tense owing to the missile tests launched by the Democratic People's Republic of Korea in the face of global opposition. This influenced various contributors of the humanitarian aid destined for the country to reconsider that aid. Major flooding in the country also had serious impact on the population. Meanwhile, several countries which had previously provided refuge to the citizens of the Democratic People's Republic of Korea became less lenient in their approach, resulting in a negative impact on the protection of refugees in the region.

Various conclusions are provided at the end of the report, with key recommendations addressed to the country concerned, complemented by other recommendations addressed to the international community.

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I. Introduction

1. This report covers the situation of human rights in the Democratic People's Republic of Korea for the period 2005-2006, particularly until August 2006. The Special Rapporteur wishes to thank all governmental, non-governmental, intergovernmental and other entities for their assistance in providing some of the information used in this report. It is regrettable that, to date, the authorities of the Democratic People's Republic of Korea have declined to invite him into the country, despite several requests from the Special Rapporteur to visit the country. His approach remains constructive, thus inviting the country to view this mandate as a window of opportunity to engage with the United Nations system.

2. The Special Rapporteur welcomes the fact that the country is a party to four key human rights treaties — the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child — which offer a solid basis for the country to promote and protect human rights. It is also hoped that the negotiations between the various international players to denuclearize the Korean peninsula will resume and provide a key opportunity to build the trust and confidence which will provide additional space for the improvement of the human rights situation.

II. Situation of human rights

A. General concerns

3. First, with the regard to the rights to food and to life, it can be recalled that the country has been hampered very severely by food shortages since the mid-1990s, mainly due to natural disasters and mismanagement on the part of the authorities. Traditionally, the people of the country were accustomed to a public distribution system of food being handed out by the State as part of social welfare. However, this collapsed in the 1990s and in 2002 the rations started to be suspended due to the new Economic Management Improvement Measures policy of the authorities. The new policy presumed that the people would have to buy food for themselves directly on the basis of higher wages and a move towards a market system whereby agricultural and other produce would be traded. However, this led to a substantial rise in prices, with particularly negative impact on many members of the urban population who were unable to fend for themselves.

4. In recent years, the country has had to depend upon food and other humanitarian aid provided by multilateral and bilateral donors. Interestingly, that practice has been commented upon as follows:

> If the North Korean government's refusal to reach out in the early 1990s amounted to a sin of omission, then its behaviour once aid began flowing in 1996 constitutes an equally disturbing set of sins of commission. As aid began arriving, the country simultaneously moved to reduce its commercial imports of food. This curious feature of North Korean behaviour — while the famine was continuing to take its toll — has not previously received the attention it deserves. Rather than use aid to supplement local production and commercial imports, aid has substituted

> for, or "crowded out", commercial imports. North Korea, in effect, has stopped importing grain through commercial routes. As a result, over the last several years, more than 90 percent of the grain brought into North Korea has been in the form of aid or concessional imports. Another way of casting these observations is in terms of the government's priorities. Rather than using humanitarian assistance as an addition to domestic production and commercial sources of supply, the government has used aid largely as balance-of-payments support, allowing it to allocate the savings in commercial imports to other priorities, including military ones and luxury imports for the elite. For example, in 1999, at the same time that it was cutting commercial grain imports to less than 200,000 metric tons, the government allocated scarce foreign exchange to the purchase of 40 MIG-21 fighters and 8 military helicopters.
>
> Moreover, one could argue that aid had another "crowding-out" effect of reducing pressure to undertake reform of the agricultural sector. The failure of domestic production to return to even its 1990 level is evidence not only of the collapse of inputs, but of the halting nature of market-oriented and incentive-based reforms.[1]

5. That tenuous situation should be placed in context.[2] Despite an improved harvest in 2005, the country is still short of food. There is a need for continuing food and other aid from outside the country, and sustaining the presence of foreign aid agencies to carry out the task of helping with the distribution, with adequate monitoring to ensure that the aid reaches the target groups. In late 2005, the World Food Programme (WFP), the United Nations agency channeling food aid into the country, had access to 160 counties/districts representing 87 per cent of the total civilian population, with no access to 43 counties (out of a total of 203 counties). On average, the intended beneficiaries numbered some 6.5 million people. However, in 2005 some 2 million people were already affected by cereal cuts and shortages in food donations from the outside.

6. The Democratic People's Republic of Korea has shown a preference for bilateral aid from countries in the vicinity and there is a need to ensure complementarity between bilateral and multilateral aid, particularly in guaranteeing access to the intended beneficiaries and effective monitoring to preventing leakage. The country's shift from accepting humanitarian relief to its current call for a development framework of a broader nature also invites reflection; it should be coupled with a strategy to incorporate human rights comprehensively into the programming process — a rights-based approach.

7. On a worrisome note, in late 2005 the authorities were no longer permitting the various markets to operate, thus banning sales of cereals, partly because of the authorities' fear that they were losing their hold on the economy, and partly as a means of reasserting their grip over the population, thereby reverting to the public distribution system. There was a doubling of average cereal rations, from 250 to 500 grams per person. From information received, those at work or who were involved in food-for-work programmes were likely to receive more food than those not falling into the category, thus increasing the latter's vulnerability — particularly children, pregnant women, older persons/the elderly and those with disabilities.

8. Also in 2005 the authorities indicated that they no longer wished to accept (multilateral) food aid from outside the country and that they wished to end the

presence of foreign humanitarian agencies, particularly those from civil society. In late 2005, it was uncertain whether the authorities would allow WFP to continue delivering food aid to the population, and several sub-offices of WFP and related food-processing plants in the country had to be closed down. Many non-governmental organizations involved in humanitarian aid were asked by the authorities to leave the country. Nevertheless, in early 2006, WFP sought approval from international donors for its "Protracted Relief and Recovery Operation". The target beneficiaries are as follows:

> (The programme) aims to target 75,000 metric tons (mt) of food each year (i) to the most food-insecure parts of the Democratic People's Republic of Korea where bilateral food aid is not sufficient and (ii) to areas susceptible to natural disasters where food production is limited and mountainous land predominates. Fifty accessible counties have been identified for intensive food for community development support and for school feeding.
>
> Targeted vulnerable populations include under-employed urban people, non-farm rural workers, people in isolated regions and selected food-deficit cooperatives and institutions. Nation-wide coverage of all accessible counties will continue as in the emergency operations for beneficiaries in orphanages and child in-patients in hospitals. All counties will be targeted for mother and child health activities for pregnant and lactating women and children at nursery schools and kindergartens, but only in ri and dong identified as vulnerable; this will be on average 50 percent of the emergency operations coverage. (Ri and dong are the lowest administrative units of the Democratic People's Republic of Korea; ri are in rural areas, dong are in urban areas.)
>
> In previous years, WFP had supported elderly people and mothers accompanying children in hospitals, but this will no longer be feasible given the reduced scale of the operation. Groups previously targeted as most food-insecure urban households will be reached through food for community development, but on a reduced scale. Food for community development activities are increasing in towns; members of urban households may also participate in projects in nearby rural areas. (WFP/EB.1/2006/8/3, paras. 38-41)

9. In May 2006, it was reported that WFP would be able to distribute a limited amount of food aid to 1.9 million of the "most needy" persons, but only to the extent of 75,000 tons of grain a year, as compared with 500,000 per year previously.[3]

10. There was a further obstacle in July 2006 due to the missile tests launched by the authorities of the Democratic People's Republic of Korea in the face of global opposition. On the one hand, this irresponsible act resulted in the unanimously adopted Security Council resolution 1695 (2006) voicing disapproval — demanding that the country suspend all missile activity and return to the "six-party talks" (involving six countries) aimed at the denuclearization of the Korean peninsula, in addition to imposing a partial arms embargo. On the other hand, the missile tests had a negative impact on the food situation of the country, since they caused various contributors of humanitarian aid to discontinue providing that aid. Those tests were a serious waste of precious national resources, which should have been spent on alleviating food shortages and responding to the plight of the population.

11. Concurrently, matters became more complicated due to devastating floods in the country that caused substantial damage and loss of lives in July and August 2006. Owing to this humanitarian crisis, some of the contributors of humanitarian aid changed their position and were willing to resume provision of aid, particularly at the bilateral level. However, from information received, the Democratic People's Republic of Korea turned down the WFP offer of additional food aid in regard to the recent floods, which had catastrophic impact on the year's crops.

12. To guarantee food security, there is also a need to move towards more sustainable agricultural techniques which are environment-friendly, given that the country suffers from limited arable land and over-exploitation of such land. In addition, it cannot be overstated that the excessive expenditure by the authorities on its defence sector based upon the country's "military-first" policy causes serious distortions in the national budget and its use of national resources; it is a key impediment to the country's development process as well as the rights to food and life and other rights.

13. As voiced by a recent Human Rights Watch analysis:

> The right to be free from hunger is not only a core humanitarian concern, but also a human rights imperative. Although it has espoused a policy of extreme self-reliance and isolation from the world, North Korea has also joined the keystone international treaties that make up a universal bill of human rights. It is bound by international law to dedicate available resources — including available foreign aid — to ensure its population's right to adequate food.
>
> The international community has recognized the right to adequate food and to the highest attainable standard of health in the International Covenant on Economic, Social and Cultural Rights, to which North Korea is a party. This right is so fundamental to human dignity that the United Nations body responsible for interpreting and evaluating compliance under the treaty has required even the poorest countries to commit themselves to providing a minimum level of food to the extent of their available resources, including available foreign aid.
>
> Moreover, states are obliged to ensure that the rights to food and health are guaranteed without discrimination of any kind as to political or other opinion, national or social origin, property, birth or other status. If it is to comply with its treaty obligations, the government of North Korea must not rely on a distribution system which is designed to reward loyalty to the state and punish those who are perceived as less politically deserving of state protection. At the very least, North Korea should accept WFP's new offer of assisting 1.9 million of the country's most vulnerable people. If it does this, and distributes all available food equally and fairly, in the short term the country may be able to curtail hunger and avoid another devastating famine should future harvests fail.[4]

14. Second, there is the question of the rights to security of the person, humane treatment, non-discrimination and access to justice. Given the non-democratic and repressive nature of the State, there continue to be many reports of transgressions by the authorities on this front, despite reforms of the Criminal Code and Criminal Procedure Code in 2004.

15. The judicial system lacks independence and is heavily influenced by the regime in power. In addition to the opaque nature of the ordinary courts, there is a parallel quasi-penal regime which does not comply with rule of law guarantees such as judicial independence, natural justice, respect for the rights of the accused and access to lawyers. This system can be described as follows:

> In addition to its Penal Code (and Criminal Procedure Law), North Korea operates a separate criminal justice system in order to exercise control over its people. One of these "quasi-judicial systems" is the "Social Safety Control Law". Article 1 of the law says, "The purpose of this law is to contribute to the protection of the people's life, property and constitutional rights and to safeguard national sovereignty and the socialist system of the DPRK"...
>
> Other quasi-justice systems North Koreans are subject to without going through the regular justice system will include the "comrade judgement committees" and "socialist lawful living guidance committees". These quasi-justice systems do in fact perform legal functions and the source of their authority is found in North Korea's Prosecution Supervision Law. Article 40 of the law lists cases, in which the prosecutors will decide to rectify law violations or pursue legal responsibilities. Section 3 of the article lists cases the prosecutors should determine "whether to turn them over to preliminary examinations, or refer them to the 'comrade judgement committee', the 'socialist lawful living guidance committee', 'labour training', or 'imprisonment'".
>
> The "comrade judgement committee" is not simply an auxiliary body under the national justice system. It is an independent and unique type of people's trial, in which ideological struggles are instilled through open and public self-criticism. These committees are organized at all levels of national agencies, workplaces and units throughout the regions and districts. ... It would appear that only those who were involved in unethical, immoral conduct or minor crimes would be referred to these forums.
>
> Another informal justice system is the so-called "socialist lawful living guidance committee". ... First, the committee on its own responsibility will organize and uniformly carry out various inspections over administrative and economic agencies, workplaces and other supervisory bodies. Second, it will perform the duty of educating the workers in its area so that they will observe the laws. Third, it will decide various policies and levels of punishment for social and economic crimes. Fourth, the committee will have authority of interpretation on various disputes and misunderstanding that may arise between and among the related agencies in the course of executing laws and regulations. ...
>
> Finally, the "safety committee" is another quasi-justice system that gets involved in the process of punishing North Korean citizens. At the Party Headquarters, the committee consists of the Party Secretary, Director of Party Organisation Guidance Department, Ministry of People's Security, the State Security Agency, Chief Justice of the Central Court, and Chief Prosecutor of the Central Prosecutor's Office. ... The committees at the Party levels are directed to exercise proper controls over various projects.

> strictly guide and control all social safety activities of the judicial and prosecutorial agencies by routinely discussing the social safety projects and judicial prosecutorial projects.[5]

16. The treatment of prisoners, particularly political prisoners, gives rise to continuing concern, with reports of a wide range of detention centres and prisons with appalling conditions and use of torture, inhuman and degrading treatment, despite a ban on such practices under the country's criminal law. The incarceration system is as follows:

> The criminals sentenced to correctional punishment are typically economic or violent criminals, rather than political criminals, and would be detained in the correctional centres managed by the correctional bureau of the People's Security Agency. In addition to official correctional facilities, North Korea has been criticized for operating political concentration camps, collection points and labour training camps. Political criminals are incarcerated in *kwanliso* operated by the "farm guidance bureau" of the State Security Agency... At the People's Security Agency the camps that hold former high-ranking officials are also called *kwanliso*. ... *Kyohwaso* are among the facilities that the Ministry for Public Security manages, and they can be likened to correctional institutions or prisons. These institutions hold persons found guilty of the most serious crimes. People who have been sentenced by a court to death or penal servitude are held in these facilities, and each North Korean province contains one or more of these facilities.[6]

17. On another front, the issue of abductions of foreigners carried out by the agents of the Democratic People's Republic of Korea has affected several countries. A number of cases in regard to Japanese nationals abducted by those agents have yet to be resolved and require effective measures and political will, particularly on the part of the Democratic People's Republic of Korea, to ensure that there is peaceful resolution of the issue, coupled with transparency and action against impunity. According to Japan, the number of abducted victims is 16; 5 members of that group have now been returned to Japan. An update on the negotiations between the two countries is outlined by a Japan Ministry of Foreign Affairs report:

> On two occasions, in November and December 2005, governmental consultations between Japan and the Democratic People's Republic of Korea were held after a break of approximately one year. Based on an agreement reached at these consultations, the Japan-Democratic People's Republic of Korea Comprehensive Talks (consultations on issues of concern including the abduction issue, consultations on security issues, and the normalization talks) were held in Beijing from February 4 to 8, 2006. Consultations on the abduction issue lasted a total of approximately 11 hours and Japan once again strongly demanded the repatriation of living abductees, a promise from North Korea to launch a new investigation aimed at revealing the truth about what happened, and the handing over of those responsible for abduction...
>
> In response, the North Korean side repeated the same explanation it had given before to the effect that "all of the living abductees have already returned to Japan". Regarding a renewed investigation, the North Korean side insisted that it had investigated the matter in good faith, stood by the

> results of that investigation, and did not even promise to continue investigations into the whereabouts of the abductees that are still unaccounted for. Regarding the handing over, the North Korean side insisted that it was a political issue and refused to hand them over.[7]

18. In 2005, there were reports of other countries affected by abductions carried out by the agents of the Democratic People's Republic of Korea. These included Thailand. The visit of the Special Rapporteur to the Republic of Korea in 2005 also revealed large numbers of persons missing from the country who may have been abducted by agents of the Democratic People's Republic of Korea, the details of which can be found in his 2006 report (E/CN.4/2006/35), which was presented orally to the Human Rights Council in 2006. The admixture of cases and countries affected by the misdeeds of the agents of the Democratic People's Republic of Korea can be seen in the following appraisal:

> Since the Korean War, an estimated 489 South Koreans have been seized, most more than twenty years ago. A fisherman captured by the North in 1969 was briefly united with his wife after 37 years, though North Korean authorities almost cancelled the reunion when a South Korean reporter covering it used the word "kidnapped" to describe the abduction. The government's hand was at least partially forced when genetic tests in Japan proved that the husband of Japan's most famous abductee ... was a South Korean abducted in 1978 at the age of sixteen. The North allowed (the) father and daughter (of the Japanese abductee) to attend a family reunion in June 2006.[8]

19. The above pattern of incidents and cases underline major transgressions of human rights. It is imperative for the Democratic People's Republic of Korea to improve not only the formal entry points for human rights, such as guarantees under its Constitution and criminal law, but also the substantive practices interrelated with the will of the political system and the capacity of its officials to implement human rights effectively.

20. Third, there is the issue of freedom of movement, asylum and refugee protection. Throughout 2005/06, there were reports of potential or actual forced return ("refoulement") of nationals from the Democratic People's Republic of Korea — who had sought asylum in neighbouring countries — to that country without adequate guarantees of safety. The less lenient approach of some countries of first asylum in South-East Asia (in offering asylum to those fleeing the Democratic People's Republic of Korea) also led to an increased influx in other South-East Asian countries.

21. In regard to the country of origin, while the Constitution of the Democratic People's Republic of Korea provides for freedom of movement of its people, the reality is the contrary since there is rigid control over migration. Generally it is not possible to move internally or externally without official permission — there is the impending threat of penal sanctions. While its criminal law was improved in 2004 to reduce sentences on those who leave the country without permission, the threat of punishment facing those who leave without permission and who are then forcibly returned to the country is ever-present and gives rise to potential or actual fear of persecution caused by the authorities.

22. This is interlinked with the issue of refugee protection, the refugee being understood internationally as a person who has left his or her country of origin for a well-founded fear of persecution. A key principle in international law in this regard is the right of non-refoulement — not to be pushed back to a country/area where a person may fear persecution. While those entitled to refugee status are often those who have left the country of origin with a fear of persecution, even those who did not originally leave the country of origin with a fear of persecution but who later fear persecution (such as through the threat of punishment if sent back forcibly while in an asylum country) can also be classified as refugees (in technical terms: refugees *sur place*). Many of those who have left the country in search of food and economic opportunities in neighbouring countries fall into the latter category, since they may fear persecution if sent back to the country; there is the threat of interrogation and penal sanctions awaiting them for having left the country without permission.

23. The communications which the Special Rapporteur sent to the Democratic People's Republic of Korea seen in "Communications" (paras. 48-58) below, exemplify the need for refugee protection and humane treatment upon return to the country of origin. To date, the authorities of the country have been uncooperative in regard to these communications. There is also a key challenge in working with neighbouring countries so as to ensure that they abide by international law, especially the principle of non-refoulement and to enable the main United Nations agency dealing with refugees — the Office of the United Nations High Commissioner for Refugees (UNHCR) — to access those who have sought asylum, given that asylum by its very nature usually involves two countries — the country of origin of the person seeking asylum and the asylum country. This is closely linked to immigration law and related bilateral arrangements between those countries.

24. Regrettably, there is a tendency among some countries of first asylum to apply their immigration laws stringently by classifying those who seek refugee status (or asylum-seekers) as illegal immigrants, prosecuting them in court for illegal entry, and or subjecting them to deportation, push-back and or "refoulement" to the country of origin. This is an unbalanced approach which should be rectified. There is a key difference between refugees and illegal immigrants: while the latter are still protected by their country of origin, the former are not and thus fall under international protection. Precisely because refugees are not protected by their country of origin, there is a need to treat them humanely and to deal with them as humanitarian cases; they should not be subjected to the status of illegal immigrants imposed by the immigration laws of the countries where they seek refuge or asylum.

25. As asylum-seekers or refugees are unlikely to have immigration documents such as passports, visas and exit or entry permits, the following type of bilateral arrangement may undermine their protection. It should be critically analysed to ensure that it abides by international law — highlighting the need to avoid criminalizing innocent people who need protection and humane treatment:

> "Article ...
>
> Both sides shall mutually cooperate on the work of preventing the illegal border crossing of residents.
>
> In the case of crossing the border without possession of a legal certificate or without passing through screening agencies or the passage place stated

on the possessed certificate, the individual shall be treated as an illegal border-crosser. However, any person of the other side who enters the boundaries of one side due to any kind of calamity or unavoidable factors shall not be considered an illegal border-crosser. A person possessing a border resident pass who comes into a non-border area with permission of public security and an entry/exit bureau shall not be considered an illegal border-crosser.

Regarding individuals who illegally cross the border, depending on the situation, a name list or relevant materials shall be turned over to the other side. However, in case of there being a criminal act after the border is crossed, it shall be handled according to the laws of the individual's country, and the other side shall be notified of the situation."

26. Various clauses above may need to be adjusted to ensure their consistency with international law, as they could regrettably lead to "refoulement" of those who seek asylum. In practice, the law enforcers, especially immigration officials and border guards, need to be instructed and trained to respect international law on the issue of refugee protection and asylum.

27. On another front, there is the issue of international responsibility-sharing or burden-sharing. The root causes of displacement need to be addressed effectively first and foremost in the country of origin. In the case of asylum-seekers from the Democratic People's Republic of Korea, it is the repressive regime of the State of origin, with its resultant human rights violations, which is the major root cause of refugee outflows. Once those seeking asylum arrive in the countries of first asylum, it is essential that these countries accord at least temporary refuge to them, with due respect to their human rights. Asylum-seekers should have access to the necessities of life in keeping with international human rights standards. For instance, it is essential to ensure birth registration of the children and access to at least primary education. Occupational opportunities should also be available so that those above the minimum age of employment can be involved in work/productive activities. Given that some countries are already exploring employment opportunities for migrant workers from other countries, in addition to regularization of their status, parallel measures may be adopted to help asylum-seekers lead a fruitful existence.

28. Where such countries are unable to offer long-term local solutions, such as local settlement, it is incumbent upon the international community to share in the responsibility for providing longer-term solutions such as resettlement and, in appropriate cases, voluntary repatriation to the country of origin with guarantees of safety. This will also create a sense of mutual confidence so that the countries of first asylum will not be impelled to take drastic measures for fear that the mass influxes of those seeking asylum will destabilize their modus vivendi. On a welcome note, some countries are now opening the door to resettle refugees from the Democratic People's Republic of Korea both directly from first-asylum countries and/or via a third country, supported by national legislation on the issue.

29. Fourth, with regard to the right to self-determination and to political participation, access to information, freedom of expression, belief and opinion, association, conscience and religion, there was no ostensible improvement during the year. The opaque and non-democratic nature of the State militates against the right to self-determination and the need for democracy in the country. Although the advent of technology and globalization has meant that some nationals of the

Democratic People's Republic of Korea have more access to foreign information, there is still no genuine free access to information, since media and related information are State-controlled and it is illegal to listen to foreign radio and television or to own computers without official permission. Political dissent is repressed, with a pervasive security network and detention camps for political prisoners. Interestingly, at the end of 2005, with various media speculation on the issue of succession in regard to the leadership of the country, it was reported that the authorities had issued an instruction forbidding discussion of the subject, with the threat of life imprisonment for those who failed to follow the instruction.[9]

30. While there are official claims that freedom of religion was allowed, the reality suggests otherwise, as seen in a recent report on the issue, based upon many interviews, which highlight a myriad of threats not only to religious freedom but also to the right to life and humane treatment. As observed by the report of the United States Commission on International Religious Freedom:

> Article 68 of the Democratic People's Republic of Korea Constitution states that "citizens have freedom of religious beliefs". However, despite the Government's assertion to the Human Rights Committee that there are no limitations on religious practice, Article 68 also has provisions on drawing in foreign forces and harming the state or social order, provisions that could lead to potentially severe limitations that could easily result in the arbitrary application of the constitutional provision on "freedom of religious beliefs".
>
> Article 67 of the Constitution provides for "freedom of speech, of the press, demonstration and association". However, as is the case with "freedom of religious beliefs", these freedoms are overshadowed and heavily, if not entirely, limited and circumscribed by other constitutional provisions, including that "the State shall adhere to the class line, strengthen the dictatorship of people's democracy"; "the State shall oppose the cultural infiltration of imperialism"; and "the State shall eliminate the way of life inherited from the outmoded society and establish a new socialist way of life in every sphere".
>
> Those interviewed for this study claimed that there are four mutually reinforcing reasons for lack of religious freedom in North Korea:
>
> – the intensive and continuous anti-religious propaganda by the Government;
>
> – the banning of religious activity, resulting in the fact that none of the interviewees was aware of any authorized religious activity inside North Korea;
>
> – the severe persecution of persons caught engaging in religious activity, which most interviewees had either heard about or personally witnessed; and
>
> – the fact that Juche, the official state ideology ... was the only officially permitted system of thought or belief in North Korea.
>
> Despite assertions of the Government of the Democratic People's Republic of Korea that the state and religion are separate, it is clear that the religious activities conducted under the auspices of Government-sponsored religious federations could more accurately be described as emanations of the North Korean party-state. The religious activity that is allowed takes place under the authority and control of the corresponding religious federation. The religious

federations are members of, and controlled by, the National United Front for the Unification of the Fatherland, which is in turn controlled by the Korean Workers Party, the ruling arm of the regime. Under the federation structure, there is no apparent mechanism, procedure, or structure for allowing belief systems and forms of worship that are not covered by an appropriate federation.[10]

31. The regime's emphasis is thus to inculcate people religiously from a young age in the belief in and total adherence to the past and current political leadership, coupled with massive ideological mobilization akin to cult worship.

B. Specific concerns

32. The rights pertaining to various groups have been affected greatly by the situation in the country and deserve more specific focus: first, women's rights, which cut across all the other issues dealt with below including child rights, the rights of older persons and the rights of those with disabilities.

33. In principle, women's rights and non-discrimination were part and parcel of the first Constitution propounded by the regime — thus in a manner, there has for a long time been formal equality between men and women. In reality, substantive equality and related implementation are the missing link. While women are a large base of the workforce, their access to high decision-making positions is limited and they are often relegated to stereotyped roles, as noted by these observations made in July 2005 by the Committee on the Elimination of Discrimination against Women:

> The Committee notes with concern the persistence of traditional and stereotyped assumptions and attitudes in respect of roles and responsibilities of women and men, which are discriminatory against women and have a pronounced impact, particularly in the areas of education and employment as well as in other areas of their lives. For example, the Committee is concerned at the stereotyping of women, which perceives them exclusively as caregivers and homemakers and assigns them to areas such as education and employment on the basis of spheres suitable to their "characteristics". The Committee is concerned that such expectations of women have serious consequences, preventing them from accessing rights and entitlements on an equal basis with men and creating a dependency on men, husbands and family for housing, food and other services. It is also concerned that, in times of economic crisis, as in the current situation of the country, women's prescribed roles and lesser entitlement intensifies their hardship and amounts to multiple discrimination. (CEDAW/C/PRK/CO/1, para. 35)

34. Second, the economic decline of the country has been particularly severe for women: they have to bear the brunt of not only the housework, child-rearing, and work outside the home but also the task of gathering food and other necessities in times of great deprivation. This has also had a huge impact on their health, which has not improved in recent years. The lack of improvement in their health/nutritional state was noted in the Special Rapporteur's report to the General Assembly in 2005 (A/60/306).

35. Third, as observed in the Special Rapporteur's earlier reports, more women have become victims of violence ranging from the home to the outside. There are

reports of human trafficking and sexual exploitation, which have severely affected women. In recent times, more women than men have been seeking refuge in neighbouring countries and many of them are smuggled in or trafficked into exploitation.

36. The Committee for the Elimination of Discrimination against Women's assessment and recommendations above should be responded to effectively by the authorities, as follows:

> In the light of the widespread famine and natural disasters that have affected the country from the mid-1990s, the Committee expresses concern about the insufficient explanation provided with respect to the impact of those phenomena on women, in particular women from rural areas, on women who are the main providers of the household and on young girls. The Committee is concerned that they may become vulnerable to trafficking and other forms of exploitation, such as prostitution.
>
> The Committee urges the State party to introduce specific poverty alleviation measures aimed at improving the situation of women to eliminate their vulnerability. The Committee recommends that the State party seek international assistance in guaranteeing that women, particularly women from rural areas, have equal access to food supplies. It urges the State party to assist women economic returnees who went abroad without valid travel permits to reintegrate into their families and society and to protect them from all forms of violations of their rights. It calls on the State party to train law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation so as to enable them to render support to women who might be at risk of becoming victims of trafficking and commercial sexual exploitation. It also recommends that the State party conduct nationwide awareness-raising campaigns on the risks and consequences of trafficking targeted at women and girls. The Committee further urges the State party to evaluate those phenomena and systematically compile information on them with a view to formulating a comprehensive strategy that includes measures of prevention, prosecution and punishment of offenders, as well as measures to rehabilitate and reintegrate victims. The Committee also urges the State party to intensify its efforts to deal with these phenomena through increased international, regional and bilateral cooperation. Information on the results of the research and progress made should be included in the next periodic report. (CEDAW/C/PRK/CO/1, paras. 41-42.)

37. Fourth, the application of women's rights in the country should not be generalized. Women close to the elite are in a good position. However, women who fall outside that group are often marginalized and discriminated against, given that the regime has divided people into three categories: those in the elite group, the wavering class in the middle and those seen as enemies of the regime. A particular concern is the plight of the third group, who are at times punished for being associated with relatives seen as hostile to the regime, on the basis of "guilt by association", and find themselves banished or sent to political detention camps with the rest of their family.

38. With regard to child rights, social services and access to education for children were commendable from a quantitative angle before the economic crisis of the mid-1990s, and there are laws which support assistance for children such as the Law

on Nursery and Upbringing of the Child which recognizes the State's responsibility towards the child. The authorities have emphasized the importance of 11 years' compulsory education and have been open to working with United Nations agencies dealing with child rights, including a visit by the Committee on the Rights of the Child.

39. The disastrous food shortage of the mid-1990s has taken a toll among many children in relation to malnutrition. As noted in the Special Rapporteur's report for the General Assembly in 2005, while the situation has improved in regard to chronic malnutrition, malnutrition rates and their impact, e.g. stunting, are still a major cause for concern. There are other chronic shortages, such as electricity at school and medicines in general.

40. Yet the situation of child rights should not be generalized. Children are also subject to the political stratification noted above in relation to women. Those with the elite do well, while the wavering class and those deemed enemies of the regime are marginalized. There is also a qualitative angle in regard to the social services offered to children — as these services are part of a mass mobilization campaign to make people subservient from a young age to the political leadership. Merely quantitative assessment of their coverage is inadequate and should be balanced with a more qualitative assessment. This affects particularly the content of the curriculum, which uses children as objects of indoctrination to justify the presence of the political system and its concomitant ideology rather than as subjects of human rights.

41. Particular attention should be paid to children who are deprived of a family environment, who are beyond the scope of social services, and/or who are seen as part of families classified as hostile to the regime. These include abandoned children, children born out of wedlock, children who have to face the juvenile justice system, children in prisons, children of dissident families, and children who are seeking asylum with their families or are themselves unaccompanied minors. Children are also the victims of the "guilt by association" practice by which the regime punishes or discriminates against whole families for being associated with a political dissident or a person deemed hostile to the regime — the discrimination is intergenerational. There is thus a challenge for international and national agencies dealing with children, particularly those with access to the localities, to act more proactively and accessibly to address not only the issue of child survival and child development but also the issue of child protection and child participation in these situations.

42. Interestingly, there is a lesson learned from the use of children in cultural activities. As noted by an observer:

> Despite the numerous social activities of the child, this social participation is not by spontaneity and creativity of social participation, but is compulsory. Even in the mass games performed by 100,000 at the Arirang festival, the testimonies of defectors show how wearisome the training for the group gymnastics is. The defectors said that, during the mass game practice, the trainees were prohibited from going to [the] restroom and taking a rest so that it was frequently [observed] that numerous students fell ill with diseases such as nephritis ... If the child is forcibly mobilized to collective events, or is forced to live in the predetermined structure, this is not the true meaning of the right to participation.[11]

43. With regard to the rights of older persons, the elderly were generally well cared for before 1995. Many lived in communities with the families as part of the traditional Asian practice of having several generations under one roof. The State offered social security through extensive pensions. However, the crisis of the mid-1990s has taken a toll among the elderly. They have been affected by the food shortage and by declining social security, social services and medical care. Increasingly, they have had to fend for themselves to survive. It is presumed that a large proportion of the deaths through starvation in the late 1990s were of these older persons. This has been mitigated to some extent by the food aid from outside the country. However, given the uncertain situation concerning access to aid in 2006, the plight of the elderly needs to be highlighted and responded to effectively.

44. With respect to the rights of those with disabilities, the new law adopted on this issue — the 2003 Law on the Protection of Persons with Disability — is welcome. In principle, it should help to counter discrimination and to offer services to help those with disabilities. Article 3 of the law states: "It is consistent policy of the Democratic People's Republic of Korea to protect the person with disability. The State shall systematically increase the investments in the field of the protection of the person with disability in order to modernize the material and technical means."

45. It remains to be seen how the law will be implemented. To date, the situation facing those with disabilities has presented a very disconcerting picture. It is reported that those with disabilities are sent away from the capital city, and particularly those with mental disabilities are detained in areas or camps known as "Ward 49" with harsh and subhuman conditions. As observed by the White Paper on Human Rights in North Korea:

> North Korean authorities are practising merciless discrimination against handicapped persons by setting up collective camps for them where they are designated according to their physical deformity or disability. Defectors from North Korea testify without exception that there exist collective camps for midgets in North Korea. According to (a testimony), ... midgets (are) not allowed to reproduce and they (are) rounded up and relocated. ... Marriages at these camps are permitted but having children is not.[12]

46. Like all the rights of the various groups noted above, there is the challenge of not only effective implementation of human rights in quantitative terms but also in qualitative terms.

47. Finally, given the fact that the country is a very homogeneous society, it is interesting to inquire about the issue of ethnicity, particularly the presence of minorities and how they are treated. Discussions which the Special Rapporteur had on this issue during a country visit to the Republic of Korea in the past year suggested that there is a small group of ethnic Chinese living in the Democratic People's Republic of Korea and many are involved in the commercial sector. There is one area where there may be a human rights concern, that of Korean women who have a sexual relationship with those of the ethnic Chinese group. On a related front, there have been reports that, when Korean women are returned forcibly from neighbouring countries, if they carry a child of those of non-Korean ethnicity, they may be subjected to discrimination and/or violence, with dire impact on the babies or children of the relationship.

III. Communications

48. During the reporting period, the Special Rapporteur sent five communications to the Government of the Democratic People's Republic of Korea. On 18 November 2005, he sent a communication in connection with two groups of Democratic People's Republic of Korea nationals who were deported back to their country by a neighbouring country against their will. The first consisted of five women and two men who were deported on 29 September 2005, after having sought asylum in a foreign school in a neighbouring country. The second case related to a group of four women and one man who also sought asylum in a foreign school in a neighbouring country, who were returned to the Democratic People's Republic of Korea against their will in October 2005.

49. The Special Rapporteur requested the Government of the Democratic People's Republic of Korea to provide him with information on the current whereabouts and status of the above-mentioned groups. He further expressed his concern about their safety. He urged the Government to abstain from punishing the returnees for having left without an exit visa and to ensure their safety.

50. On 1 December 2005, the Government of the Democratic People's Republic of Korea replied to the communication. In the reply, the Government reiterated its position that it did not recognize the mandate of the Special Rapporteur and therefore did not wish to meet or communicate with the Special Rapporteur regarding human rights issues.

51. The second communication was sent on 20 December 2005, jointly with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women, its causes and consequences. In the communication, they raised a series of human rights concerns, including punishment of those who left without an exit visa, the harsh treatment of prisoners in political and re-education labor camps and the absence of judicial process. They appealed to the Government of the Democratic People's Republic of Korea not to torture, punish, summarily execute or otherwise punish its citizens for exercising their human right to leave their own country. They further appealed to the Government of the Democratic People's Republic of Korea to take all necessary measures to guarantee the rights of all women and girls in its territory to be free from any gender-based violence, discrimination and abuse, to ensure freedom of religion and belief and to ensure a proper judicial process.

52. On 4 January 2006, the Government of the Democratic People's Republic of Korea replied to the communication. In its reply, the Government rejected the content of the communication and reiterated its position that it did not recognize the mandate of the Special Rapporteur regarding human rights issues.

53. On 24 March 2006, a communication was sent to the Government of the Democratic People's Republic of Korea, jointly with the Special Rapporteur on trafficking of persons, especially women and children, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the sale of children, child prostitution and child pornography in connection with the forced repatriation of a female national of the Democratic People's Republic of Korea by a neighbouring country on 28 February 2006 against her will. The woman and her one-year-old daughter were sold to a national of a neighbouring country,

whom she was forced to marry. The woman gave birth to a second daughter soon thereafter. Concern was expressed that the woman might face harsh punishment since she had already been deported on two previous occasions, but managed each time to return to her children in the neighbouring country. The special procedures appealed to the Government of the Democratic People's Republic of Korea to guarantee its citizens the human right to leave their own country. They furthermore urged the Government to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person.

54. On 12 April 2006, the Government of the Democratic People's Republic of Korea replied to the communication. In the reply, the Government rejected the content of the communication and reiterated its position that it did not recognize the mandate of the Special Rapporteur.

55. On 26 April 2006, a communication was sent to the Government of the Democratic People's Republic of Korea, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the question of torture. In the communication, they raised the case of a male national of the Democratic People's Republic of Korea who was held in critical health condition after he was reportedly tortured. They appealed to the Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, and furthermore urged the Government to suspend the capital punishment against him until all allegations relating to the absence of trial and the recourse to torture had been thoroughly investigated.

56. On 5 May 2006, the Government of the Democratic People's Republic of Korea replied to the communication rejecting the content of the communication. The Government reiterated its position that it did not recognize the mandate of the Special Rapporteur.

57. On 18 August 2006, the Special Rapporteur sent a communication to the Government of the Democratic People's Republic of Korea concerning the case of a male national of the Republic of Korea who was reportedly abducted by a patrol boat of the Government of the Democratic People's Republic of Korea with 11 other crewmen of a fishing boat in June 1987. He reportedly attempted to escape the Democratic People's Republic of Korea three times and was consequently detained, despite several requests to return to his country. The Special Rapporteur appealed to the Government not to detain, torture or otherwise punish a national of the Republic of Korea for exercising his right to return to his country.

58. Information regarding any reply from the Government of the Democratic People's Republic of Korea in response to this communication will be contained in the next report of the Special Rapporteur.

IV. Conclusions

59. **The situation of human rights concerning the Democratic People's Republic of Korea identified by the analysis above provides continuing cause for concern. There are still many transgressions and discrepancies of an egregious nature which require effective redress. While welcoming the fact that the country is a party to four human rights treaties and that it has engaged with the monitoring bodies under those treaties, as well as adopting some key reforms of the domestic law such as its criminal law, there is still a huge gap between formal recognition of human rights and substantive implementation of human rights in the country.**

60. **There are major concerns in regard to the rights to food and life, the rights to security of the person and humane treatment, the rights to freedom of movement, asylum and refugee protection, and various political rights such as self-determination, freedom of expression, association and religion. Specific concerns raised in this report include women's rights, particularly violence against women, child rights, particularly child protection and participation, the rights of older persons/the elderly, the rights of those with disabilities and the ethnic issue.**

61. **In future, the authorities of the Democratic People's Republic of Korea should take the following measures/actions:**

- **Abide effectively by human rights, particularly by implementing the four human rights treaties to which the State is a party, in addition to acceding to and implementing the totality of human rights instruments, and to accord adequate resources to ensure their implementation, especially to re-allocate military budgets for this purpose;**
- **Allow humanitarian agencies to stay in the country to ensure food distribution to the target groups with effective monitoring, and to promote sustainable agricultural development to ensure food security;**
- **Reform the national law so as not to require travel permits and not to punish those who leave the country without permission;**
- **Initiate reform of its prison system under the concept of the rule of law, with improvement of the criminal justice system, due safeguards for the accused, an independent judiciary and access to justice, and to abolish sanctions for political dissent;**
- **Liberalize its laws, policies and practices to ensure respect for the totality of civil, political, economic, social and cultural rights;**
- **Address the specific concerns of women, children, older persons, those with disabilities and ethnic groups by substantively promoting non-discrimination;**
- **Direct its law enforcers to respect human rights and ensure capacity-building through training and education in this regard;**
- **Seek assistance from the Office of the United Nations High Commissioner for Human Rights for programmes to enhance human rights' promotion and protection;**

– **Enable the Special Rapporteur and other mechanisms, as appropriate, to visit the country and assist in human rights' promotion and protection; and**

– **Invite the various human rights monitoring bodies under the four treaties to which the State is a party to visit the country consistently to help monitor the situation and follow up progress in regard to needed reforms, given that the country has been willing to engage with those bodies at a certain level.**

62. **In addition, the rest of the international community should take the following measures/actions:**

– **Support the various recommendations of the Special Rapporteur submitted above as well as in his earlier reports;**

– **Continue to provide food aid as necessary, while ensuring complementarity between the different types of aid, access to the target groups and relevant monitoring;**

– **Respect the principle of asylum, particularly non-refoulement, to protect refugees, and discard those arrangements or practices which undermine this principle, while promoting international solidarity to burden-share and address the root causes of the outflows;**

– **Assist the country to reform its prison system and to abide by the rule of law; and**

– **Respond in a balanced manner to the country's concerns for "security" by packaging human rights initiatives with security guarantees and incentives for economic and other development, reflective of a comprehensive approach to human rights with practical implementation measures.**

Notes

[1] Stephan Haggard and Marcus Noland, *Hunger and Human Rights: The Politics of Famine in North Korea*, United States Committee for Human Rights in North Korea, Washington, 2005, p. 16.

[2] For recent analyses, see: "White Paper on human rights in North Korea 2005", Korean Institute for National Unification, Seoul, 2005; "North Korean human rights: trends and issues", National Human Rights Commission of Korea, Seoul, 2005; "DPRK: situation bulletin", Office of Coordinator for Humanitarian Affairs Office in the Democratic People's Republic of Korea, August-September 2005; *Time* magazine, 31 October 2005, pp. 12-19; Christine Ahn, "Famine and the Future of Food Security in North Korea", FoodFirst: Institute for Food and Development Policy, Oakland, Calif., 2005; Kim Young-yoon and Choi Soo-Young, "Understanding North Korea's economic reforms", Centre for the North Korean Economy and Korea Institute for National Unification, Seoul, 2005; *North Korea Today*, 29th edition, Research Institute for North Korean Society, Seoul, July 2006.

[3] *Financial Times*, 12 May 2006, p. 6.

[4] Human Rights Watch, "A matter of survival: the North Korean government's control of food and the risk of hunger", Human Rights Watch, New York, Vol. 18., No. 3 (c)2005, p. 4.

[5] Kim Soo-An, "The North Korean penal code, criminal procedures and their actual applications", Korea Institute for National Unification, Seoul, 2006, pp. 20-23.

[6] "White Paper on Human Rights in North Korea 2005", op. cit., pp. 69-70.

[7] "Abductions of Japanese Citizens by North Korea", Ministry of Foreign Affairs of Japan, Tokyo, 2006, p. 4.

[8] International Crisis Group, "After North Korea's missile launch: are the nuclear talks dead?", Policy Briefing, Asia Briefing No. 52, Seoul/Brussels, 9 August 2006, p. 10.

[9] *Bangkok Post*, 12 December 2004, p. 6.

[10] "Thank You Father Kim Il Sung: eyewitness accounts of severe violations of freedom of thought, conscience, and religion in North Korea", United States Commission on International Religious Freedom, Washington, 2005, pp. 12-15.

[11] Soon Hyung Yi, "Human Rights of the Child in North Korea", International Seminar on the North Korean Human Rights 2005, National Human Rights Commission of Korea, Seoul, 2005, pp. 407-41; 421-3.

[12] "White Paper on Human Rights in North Korea 2005", op. cit., pp. 124-5.